

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

JANIS GRIFFIN, INDIVIDUALLY AND  
AS DAUGHTER OF CHARLES W.  
GRIFFIN, DECEASED;

Plaintiff,

vs.

CHARLES G. BREED, CHARLES R.  
BREED, WHITNEY V. BREED, JANIS  
R. BREED, LESLIE KOBATA, IN HIS  
INDIVIDUAL CAPACITY AS HAWAII  
STATE OFFICIAL;

Defendants.

CIV. NO. 22-00503 LEK-RT

**ORDER: GRANTING IN PART AND DENYING IN PART DEFENDANT  
LESLIE KOBATA'S MOTION FOR PARTIAL DISMISSAL OF  
PLAINTIFF'S FIRST AMENDED COMPLAINT FILED MARCH 17, 2023,  
WITH PREJUDICE; GRANTING IN PART AND DENYING  
IN PART DEFENDANTS C.G. BREED, C.R. BREED, WHITNEY BREED,  
AND JANIS BREED'S MOTION TO DISMISS FIRST AMENDED COMPLAINT;  
SUA SPONTE DISMISSING PLAINTIFF'S SECOND AMENDED COMPLAINT;  
AND DENYING PLAINTIFF'S PETITION FOR CHANGE OF VENUE**

On March 29, 2023, Defendant Leslie Kobata, in his individual capacity as a Hawai'i state official ("Kobata"), filed his Motion for Partial Dismissal of Plaintiff's First Amended Complaint Filed March 17, 2023, with Prejudice ("Kobata Motion"). [Dkt. no. 18.] On March 31, 2023, Defendants Charles G. Breed ("C.G. Breed"), Charles R. Breed ("C.R. Breed"), Whitney V. Breed ("Whitney Breed"), and Janis R. Breed ("Janis Breed" and collectively "Breed Defendants") filed their Motion to Dismiss First Amended Complaint ("Breed Motion").

[Dkt. no. 19.] On April 17, 2023, pro se Plaintiff Janis Griffin, individually and as daughter of Charles W. Griffin, deceased ("Plaintiff"), filed her memoranda in opposition to the Breed Motion ("Breed Opposition") and the Kobata Motion ("Kobata Opposition"). [Dkt. nos. 22, 23.] Kobata and the Breed Defendants filed their respective replies on June 23, 2023 ("Kobata Reply" and "Breed Reply"). [Dkt. nos. 24, 25.]

The Court finds these matters suitable for disposition without a hearing pursuant to Rule LR7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rules"). On June 30, 2023, the Court issued an entering order informing the parties of the Court's rulings on the respective motions ("6/30 EO"). [Dkt. no. 26.] This Order supersedes the 6/30 EO. The Kobata Motion and the Breed Motion are hereby granted in part and denied in part for the reasons set forth below.

#### **BACKGROUND**

The operative pleading for the Breed Motion and the Kobata Motion is Plaintiff's First Amended Complaint, which was filed on March 17, 2023. [Dkt. no. 14.] Plaintiff alleges she is the sole child of Charles W. Griffin ("C.W. Griffin"), who lived in a condominium in Honolulu, Hawai'i. See First Amended Complaint at ¶¶ 1-3. In 2013, C.W. Griffin purchased the condominium ("the Property") as trustee of a trust created in

2001 ("the Trust"). The Property's deed and transfer certificate of title ("TCT") was subsequently recorded in the State of Hawai'i Bureau of Conveyances ("BOC") Land Court registry. But, according to Plaintiff the TCT is now missing from the registry. See id. at ¶¶ 50-51.

Plaintiff states C.G. Breed, C.W. Griffin's grandson, sought an issuance of a Quitclaim Deed for the conveyance of the Property. See id. at ¶¶ 3, 60. A Quitclaim Deed was prepared even though C.G. Breed allegedly lacked a power of attorney to act on behalf of C.W. Griffin. See id. at ¶ 61. Plaintiff alleges the Quitclaim Deed accomplished three things:

(1) granted C.G. Breed legal capacity as the successor trustee of the Trust; (2) granted C.G. Breed authority to sell the Property; and (3) conveyed the Property into the Trust. See id. at ¶ 64. Plaintiff states Kobata, the registrar of the BOC/Land Court, removed the certificate of title of the Property from the BOC/Land Court registry, which allowed the Quitclaim Deed to be registered. See id. at ¶¶ 6, 79-81.

In addition, the Breed Defendants, who are all Arizona residents, see id. at ¶¶ 15-18, allegedly lured and/or abducted C.W. Griffin from his Hawai'i home and transported him by air to Arizona against his will and held him at the residence of C.R. Breed and Janis Breed, see id. at ¶¶ 35-36. This occurred prior to September 2016. See id. at ¶ 37. On December 7, 2020, C.W.

Griffin died in Arizona and his death certificate states his place of residence before his death was at C.R. Breed and Janis Breed's residence. See id. at ¶¶ 44, 49.

Plaintiff asserts the following claims: (1) a claim against Kobata alleging that his failures to comply with the rules and statutes applicable to the BOC/Land Court resulted in the illegal transfer of the Property ("Count I"); (2) a claim against Kobata asserting a facial and as-applied challenge to the BOC/Land Court's policy permitting the transfer of property prior to the registration of the deed of conveyance because it leads to the deprivation of citizens' property, in violation of the petition clause of the First Amendment ("Count II"); (3) a claim against Kobata asserting a facial and as-applied challenge to the BOC/Land Court's policy because it violates the due process clause of the Fourteenth Amendment ("Count III"); (4) a claim for intentional infliction of emotional stress ("IIED") against the Breed Defendants ("Count 4"); and (5) a wrongful death claim against the Breed Defendants ("Count V"). Plaintiff alleges the Court has jurisdiction over Kobata based on federal question jurisdiction and has jurisdiction over the Breed Defendants based on diversity jurisdiction. See id. at ¶¶ 10-11.

In the 6/30 EO, the parties were informed that all claims in the First Amended Complaint were dismissed without

prejudice, and the Court stated that “[a] written order will follow that will supersede these rulings” and “Plaintiff [was] not to file her second amended complaint until after the written order is filed.” [6/30 EO at PageID.263.] Despite the Court’s instruction, Plaintiff filed her Second Amended Complaint and Demand for Jury Trial (“Second Amended Complaint”) on August 2, 2023. [Dkt. no. 28.] Also on August 2, 2023, Plaintiff filed her Petition for Change of Venue (“Petition”). [Dkt. no. 29.]

## **DISCUSSION**

### **I. Standing**

“Because the Constitution limits [a federal court’s] jurisdiction to cases and controversies, standing is an essential and unchanging requirement.” In re E. Coast Foods, Inc., 66 F.4th 1214, 1217–18 (9th Cir. 2023) (citation and internal quotation marks omitted). “[A] party must establish an Article III case or controversy before [a federal court] exert[s] subject matter jurisdiction.” Id. at 1218 (citing Cetacean Cmty. v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004) (“A suit brought by a plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III federal court therefore lacks subject matter jurisdiction.”) (citation omitted))).

To have standing, *i.e.*, “[t]o bring suit, a plaintiff must plead an injury in fact attributable to the defendant’s

conduct and redressable by the court.” Tyler v. Hennepin Cnty., 143 S. Ct. 1369, 1374 (2023) (citation omitted). “An ‘injury in fact’ is ‘an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.’” Van v. LLR, Inc., 61 F.4th 1053, 1063 (9th Cir. 2023) (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)).

Here, Counts I through III assert claims relating to the Property. The Court notes that those three claims are ambiguous for numerous reasons. Count I is a claim against Kobata, but Plaintiff does not allege what statute or law Kobata violated. Counts II and III are facial and as-applied challenges to a BOC policy but Plaintiff does not name the BOC as a defendant. More importantly, though, Plaintiff does not allege that she has a legal interest in the Property. Notably, she brings this action in her individual capacity and as the daughter of C.W. Griffin, but she does not allege that, for example, she was a trustee of C.W. Griffin’s estate or his guardian ad litem. Thus, to the extent that she seeks recourse for the Property’s conveyance to some of the Breed Defendants, she does not allege a legally-protected interest and, therefore, she lacks standing. See Tingley v. Ferguson, 47 F.4th 1055, 1069 (9th Cir. 2022) (“The ordinary rule of standing is that a party ‘must assert his [or her] own legal rights and interests,

and cannot rest his [or her] claim to relief on the legal rights or interests of third parties.'" (quoting Warth v. Seldin, 422 U.S. 490, 499, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975))). The same reasoning applies insofar as Plaintiff implicitly invokes third-party standing. See Thole v. U.S. Bank N.A., 140 S. Ct. 1615, 1620 (2020) ("But in order to claim 'the interests of others, the litigants themselves still must have suffered an injury in fact, thus giving' them 'a sufficiently concrete interest in the outcome of the issue in dispute.'" (citations and internal quotation marks omitted))).

Moreover, if Plaintiff is attempting to bring claims on behalf of C.W. Griffin's estate, she would need to be the personal representative of the estate, and she cannot represent the estate *pro se*. See Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008) ("[C]ourts have routinely adhered to the general rule prohibiting *pro se* plaintiffs from pursuing claims on behalf of others in a representative capacity." (citations omitted))). Counts I, II, and III must therefore be dismissed.

## **II. Personal Jurisdiction**

Counts IV and V are alleged against the Breed Defendants. The Breed Defendants argue this Court does not have personal jurisdiction over them. See Breed Motion, Mem. in Supp. of Motion at 4.

The Ninth Circuit has stated:

"A federal district court sitting in diversity has in personam jurisdiction over a defendant to the extent the forum state's law constitutionally provides." Metro. Life Ins. Co. v. Neaves, 912 F.2d 1062, 1065 (9th Cir. 1990). Since this case was brought in Hawaii, and "Hawai'i's long-arm statute allows Hawai'i courts to invoke personal jurisdiction to the full extent permitted by the due process clause," Yamashita v. LG Chem, Ltd., 518 P.3d 1169, 1171 (Haw. 2022), the statutory question here collapses into the constitutional one: a court sitting in Hawaii can exercise jurisdiction over [Plaintiff]'s claims against [the Breed Defendants] if doing so is consistent with the Fourteenth Amendment. The Supreme Court's due process precedents have "recogniz[ed] two kinds of personal jurisdiction: general . . . and specific . . . jurisdiction." Ford [Motor Co. v. Mont. Eighth Jud. Dist. Ct.], 141 S. Ct. [1017,] 1024 [(2021)]. . . .

See Yamashita v. LG Chem, Ltd., 62 F.4th 496, 502 (9th Cir. 2023) (some alterations in Yamashita) "General jurisdiction exists when a defendant is domiciled in the forum state or his activities there are 'substantial' or 'continuous and systematic.'" Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998) (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-16, 104 S. Ct. 1868, 1872-73, 80 L. Ed. 2d 404 (1984)).

The Ninth Circuit

employ[s] a three-part test to assess whether a defendant has sufficient contacts with the forum state to be subject to specific personal jurisdiction:



(1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

(2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and

(3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger [v. Fred Martin Motor Co.], 374 F.3d [797,] 802 [(9th Cir. 2004)]. The plaintiff has the burden of proving the first two prongs. CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1076 (9th Cir. 2011). If he does so, the burden shifts to the defendant to "set forth a 'compelling case' that the exercise of jurisdiction would not be reasonable." Id. (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)).

The exact form of our jurisdictional inquiry depends on the nature of the claim at issue. . . . For claims sounding in tort, we . . . apply a "purposeful direction" test and look to evidence that the defendant has directed his actions at the forum state, even if those actions took place elsewhere. [Schwarzenegger, 374 F.3d] at 802-03. . . .

Picot v. Weston, 780 F.3d 1206, 1211-12 (9th Cir. 2015).

In analyzing whether a court has specific personal jurisdiction over a tort claim, [court's] apply [a] three-part "effects" test derived from Calder v. Jones, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984). See Schwarzenegger, 374 F.3d at 803. Under this test, a defendant purposefully directed his

activities at the forum if he: "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." Id. (quoting Dole Food Co. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002)). In applying this test, we must "look[] to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." Walden [v. Fiore], 134 S. Ct. [1115,] 1122 [(9th Cir. 2014)]. Thus, a "mere injury to a forum resident is not a sufficient connection to the forum." Id. at 1125. Rather, "an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State." Id.

Id. at 1213-14 (some alterations in Picot).

General jurisdiction is inapplicable here because the Breed Defendants are domiciled in Arizona, not Hawai'i, and there is no evidence that they engage in substantial or continuous and systematic activities in Hawai'i. See Panavision Int'l, 141 F.3d at 1320. Counts IV and V are tort claims against the Breed Defendants. Accordingly, as to specific jurisdiction, Plaintiff's allegations are too sparse to determine whether any of the Breed Defendants purposely directed his or her activities at Hawai'i. See Picot, 780 F.3d at 1214. For the IIED claim, Plaintiff alleges C.G. Breed and Whitney Breed "lured C.W. Griffin from his Hawaii home, . . . and transported him by air from Hawaii to Arizona," [First Amended Complaint at ¶ 35,] but their contact with C.W. Griffin and the alleged injury to him are not sufficient to allege a basis for

personal jurisdiction over the Breed Defendants, see Picot, 780 F.3d at 1214 (citing Walden, 134 S. Ct. at 1122).

The Court notes that Plaintiff does allege C.G. Breed hired an attorney to get C.W. Griffin's marriage annulled in Hawai'i family court and C.G. Breed was then appointed as his guardian ad litem. See First Amended Complaint at ¶¶ 54-55. Plaintiff also alleges C.G. Breed hired another Hawai'i law firm to draft and file the Quitclaim Deed. See id. at ¶ 61. Although such actions could possibly establish personal jurisdiction over C.G. Breed, those alleged contacts with Hawai'i relate to Plaintiff's claim concerning the Property, not the IIED claim. Thus, personal jurisdiction over C.G. Breed for the IIED claim is not adequately alleged.

As to the wrongful death claim, Plaintiff alleges the Breed Defendants recklessly exposed C.W. Griffin to COVID-19. See id. at ¶ 108. The purported exposure and C.W. Griffin's death occurred in Arizona. As such, it is unclear how the Breed Defendants' actions that allegedly resulted in C.W. Griffin's wrongful death were directed at Hawai'i. Thus, Counts IV and V are dismissed because Plaintiff has not sufficiently alleged that the Court has personal jurisdiction over the Breed Defendants. See Fed. R. Civ. P. 12(b)(2) (stating that the defense of "lack of personal jurisdiction" may be asserted in a motion).

### **III. Plaintiff's Second Amended Complaint**

Although Plaintiff filed her Second Amended Complaint before the Court issued its written order regarding the Breed Motion and the Kobata Motion, and the Second Amended Complaint does not comply with Fed. R. Civ. P. 15(a), the Court addresses the Second Amended Complaint because it attempts to cure the deficiencies related to Plaintiff's standing for her claims concerning the Property. See Jones v. L.A. Cent. Plaza LLC, 74 F.4th 1053, 1058 (9th Cir. 2023) ("a jurisdictional issue such as Article III standing may be raised *sua sponte* by the court at any time." (citing Fed. R. Civ. P. 12(h)(3))). Further, the Second Amended Complaint does not reallege Plaintiff's tort claims against the Breed Defendants, *i.e.*, Counts IV and V in the First Amended Complaint. Plaintiff, therefore, waives her tort claims against the Breed Defendants insofar as she brings suit in this district court. See Sechrest v. Ignacio, 549 F.3d 789, 804 (9th Cir. 2008) ("Generally, amendment of a complaint or petition constitutes waiver of any omitted arguments or claims from previous versions of the complaint or petition." (citation omitted)).

In the Second Amended Complaint, Plaintiff alleges she "has a beneficial interest in" the Property. [Second Amended Complaint at ¶ 28.] Although not precisely clear, Plaintiff purports to have a beneficial interest in the Property because

she asserts she would have been an heir to the Property, if C.W. Griffin still owned it at the time of his death. See, e.g., id. at ¶ 28. After purchasing the Property, C.W. Griffin married Ann Yurick ("Yurick"), and the title to the Property was transferred out of the Trust to C.W. Griffin and Yurick as tenants by the entirety through an apartment deed filed with the BOC/Land Court. See id. at ¶ 28. Plaintiff alleges that the apartment deed stated: "[t]he rights and obligations of the Grantor (Charles W. Griffin) and the Grantee (Charles W. Griffin and Ann V. Yurick) shall be binding upon and inure to the benefit of their respective **heirs**, devisees, personal representatives, successors, and assigns.'" [Id. (alteration and emphasis in original).] Plaintiff alleges the language in the apartment deed granted her a beneficial interest in the Property.

"A tenancy by the entirety is a unique form of ownership in which both spouses are jointly seized of property such that neither spouse can convey an interest alone nor can one spouse's creditor attach the property to satisfy a debt." Traders Travel Int'l, Inc. v. Howser, 69 Haw. 609, 613, 753 P.2d 244, 246 (1988) (citation omitted). "Additionally, a tenancy by the entirety must be held exclusively by married spouses who alone possess the mutual right of survivorship. Should the

spouses divorce, the property becomes a tenancy in common.” Id. at 614-615, 753 P.2d at 247 (citations omitted).

To the extent that Plaintiff alleges the apartment deed conferred upon her a beneficial interest in the Property, she fails to allege a legal interest because the tenancy by the entirety did not confer to her a legal interest in the Property. The Property was jointly owned by C.W. Griffin and Yurick as spouses with the right of survivorship belonging to both C.W. Griffin and Yurick. Thus, insofar as Plaintiff contends that she has standing to raise claims related to the Property based on an interest created by the tenancy by the entirety, her contention is misplaced.

Further, Plaintiff alleges after C.W. Griffin was purportedly abducted/kidnapped from Hawai`i and moved to Arizona, he was coerced into terminating his marriage with Yurick, and a marital settlement was issued. See Second Amended Complaint at ¶¶ 30-31. Plaintiff further alleges that, “[t]o conceal the divorce decree and in particular the marital settlement, the entire case files of the [divorce] proceedings were permanently purged from the public record.” [Id. at ¶ 32.] The files of the divorce proceedings were allegedly purged because the marital settlement would have “returned the [P]roperty to C. W. Griffin.” [Id.] Although Plaintiff alleges she “had an estate interest in the [P]roperty that should have

been returned to C. W. Griffin[,]” [id. at ¶ 46,] she again fails to adequately allege that she had a legal interest in the Property. She does not allege she was a representative of C.W. Griffin’s estate and, although she was C.W. Griffin’s daughter, Plaintiff does not allege she was a beneficiary of C.W. Griffin’s estate.

Plaintiff states the marital settlement was purged from the public record, but she fails to allege how it was purged, who purged the record, and how she knows the Property was solely transferred to C.W. Griffin from the tenancy by the entirety. It is unclear whether, at the time of the marital settlement, the Property transferred back to C.W. Griffin through the Trust or some other way. It is also possible that the tenancy by the entirety became a tenancy in common, which means Yurick would have had a remaining interest in the Property. See Haw. Rev. Stat. § 509-2(f) (“Upon entry of a decree granting divorce or annulment between the spouses or the termination of the reciprocal beneficiary relationship, . . . the real property shall be treated as held in tenancy in common.”); see also Traders Travel Int’l, 69 Haw. at 615, 753 P.2d at 247 (“Should the spouses divorce, the property becomes a tenancy in common.” (citation omitted)).

Moreover, Plaintiff’s allegations regarding the marital settlement are confusing because she also alleges that

the apartment deed "identifying C. W. Griffin and Ann Yurick as tenants in entirety as legal owners is the **last best legitimate evidence** of ownership of the subject property." [Id. at ¶ 44 (emphasis added).] Again, however, Plaintiff does not have a legal interest in the Property based on the tenancy by the entirety. If the apartment deed is the "last best legitimate evidence of ownership of" the Property, see id., she cannot challenge the conveyance of the Property.

Finally, Plaintiff alleges she was deprived of her interest in the Property because Kobata, C.G. Breed, and C.G. Breed's counsel - Margery S. Bronster, Esq. - engaged in a scheme to defraud C.W. Griffin. Specifically, she states that Kobata, C.G. Breed, and Ms. Bronster committed

a fraudulent scheme that deprived C. W. Griffin of his entire trust estate without his consent or court order. C. G. Breed relied on Ms. Bronster's legal advice on how to commit a crime/fraud. Ms. Bronster relied on Defendant Kobata to use the color of the law to record the void Quitclaim Deed. In the end, their fraudulent scheme was exposed when Defendant Kobata censored the void TCT [for the Quitclaim Deed] from the Land Court registration book.

[Id. at ¶ 52.] Plaintiff also alleges: "The record substantiates that C. G. Breed, Ms. Bronster, and Defendant Kobata initiated a deliberately planned and carefully executed scheme to defraud C. W. Griffin of his estate. Proof of the scheme and its success is conclusive." [Id. at ¶ 56.] The



Court notes that fraud claims must be alleged with particularity pursuant to Fed. R. Civ. P. 9(b). See Glazer Cap. Mgmt., L.P. v. Forescout Techs., Inc., 63 F.4th 747, 765 (9th Cir. 2023) (“The complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity.” (quotation marks and citation omitted)). The Ninth Circuit has highlighted the importance of the particularity requirement for claims sounding in fraud:

Because allegations of fraud inescapably carry a degree of moral turpitude, Rule 9(b) imparts a heightened note of seriousness, requiring a greater degree of pre-discovery investigation by the plaintiff, followed by the plaintiff’s required particular allegations, thereby protecting a defendant’s reputation from frivolous and unfounded allegations and permitting a particularized basis for a defendant to respond to the particularized allegations.

Irving Firemen’s Relief & Ret. Fund v. Uber Techs., Inc., 998 F.3d 397, 404 (9th Cir. 2021) (citation omitted). Putting aside Plaintiff’s allegations of fraud, she still does not sufficiently allege standing because her allegations concerning the fraudulent scheme affected C.W. Griffin and “**his** entire trust estate.” See Second Amended Complaint at ¶ 52 (emphasis added). Plaintiff has not adequately alleged a legal interest in C.W. Griffin’s trust estate and, therefore, she does not have standing to bring her claims related to the conveyance of the

Property. As such, the Second Amended Complaint must be dismissed.

#### **IV. Petition for Change of Venue**

In the Petition, Plaintiff "requests venue for [the Breed Defendants] be moved to the United States District Court of Arizona-Phoenix Division." [Petition at 1.] Plaintiff's Petition is improper for multiple reasons. The Second Amended Complaint does not reallege Plaintiff's tort claims against the Breed Defendants and, thus, there are no claims against the Breed Defendants. The Second Amended Complaint effectively removes the Breed Defendants as defendants in this case and, as such, the claims against the Breed Defendants cannot be transferred to another district court. Additionally, because a "plaintiff [is] the master of the claim," Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987), Plaintiff may file her claims against the Breed Defendants in the United States District Court for the District of Arizona on her own accord, *i.e.*, without this Court's permission (particularly in light of the analysis *supra* Discussion Section II). Accordingly, the Petition is denied.

#### **V. Leave to Amend**

The Court grants in part and denies in part the Breed Motion and the Kobata Motion. The Breed Motion is granted insofar as the claims against the Breed Defendants are

dismissed, but the Breed Motion is denied insofar as they are denied without prejudice. However, because Plaintiff failed to reallege the claims against the Breed Defendants in the Second Amended Complaint, and Plaintiff sought to transfer venue to another district, Plaintiff is not granted leave to amend the claims against the Breed Defendants. If Plaintiff so chooses, she may file her claims against the Breed Defendants in the United States District Court for the District of Arizona, assuming that district has jurisdiction, or any other district that would have jurisdiction over the Breed Defendants. The Court notes, however, that it makes no findings as to the merits of any claims that Plaintiff attempted to assert in this case against the Breed Defendants.

The Kobata Motion is granted in part insofar as the claims against Kobata are dismissed due to Plaintiff's lack of standing to challenge the conveyance of the Property, but the Kobata Motion is denied insofar as the dismissal is without prejudice. Because the Court reviewed Plaintiff's Second Amended Complaint sua sponte, and the Court concludes that Plaintiff again fails to adequately allege standing, the Second Amended Complaint is likewise dismissed. The dismissal is without prejudice, though, because Plaintiff is proceeding pro se and it is arguably possible for her to cure the defect regarding standing. The Court cautions Plaintiff that she is

not necessarily entitled to additional amendments of her complaint, particularly because she fails to allege a core constitutional requirement concerning the Court's jurisdiction over the instant case. But, the Court grants Plaintiff leave to file a third amended complaint out of an abundance of caution. See Garity v. APWU Nat'l Labor Org., 828 F.3d 848, 854 (9th Cir. 2016) ("Unless it is absolutely clear that no amendment can cure the defect, a pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action." (alteration, citation, and internal quotation marks omitted)).

If Plaintiff chooses to file a third amended complaint, she must do so by **September 25, 2023**. Plaintiff's third amended complaint must include all of the claims that she wishes to allege, and all of the allegations that her claims are based upon, even if she presented them in her original complaint, First Amended Complaint, or Second Amended Complaint. She cannot incorporate any part of her original complaint, First Amended Complaint, or Second Amended Complaint by merely referring to them. If Plaintiff fails to file her third amended complaint by **September 25, 2023**, or if the third amended complaint fails to cure the defect identified in this Order, her claims will be dismissed with prejudice - in other words, without leave to amend. Plaintiff would then have no remaining

claims in this district court, and the Clerk's Office would be directed to close the case.

Finally, Plaintiff did not follow the Court's direction in the 6/30 EO. As such, Plaintiff is cautioned that additional failures to adhere to either (i) the deadlines, directions, or orders issued in this case by this Court or the magistrate judge, (ii) the Federal Rules of Civil Procedure, or (iii) the Local Rules may lead to sanctions, including monetary sanctions, such as an award of an opposing party's attorney's fees, or the dismissal of her case. See Goodyear Tire & Rubber Co. v. Haeger, 581 U.S. 101, 107 (2017) (stating federal courts possess the inherent authority "to fashion an appropriate sanction for conduct which abuses the judicial process" (quotation marks and citation omitted)); see also Fed. R. Civ. P. 11; Local Rule LR11.1.

### **CONCLUSION**

On the basis of the foregoing, the Court HEREBY GRANTS IN PART AND DENIES IN PART: Kobata's Motion for Partial Dismissal of Plaintiff's First Amended Complaint Filed March 17, 2023, with Prejudice, filed March 29, 2023; and the Breed Defendant's Motion to Dismiss First Amended Complaint, filed March 31, 2023.

The Kobata Motion is GRANTED to the extent that Counts I, II, and III are DISMISSED, but it is DENIED to the

extent that the dismissal is WITHOUT PREJUDICE. The Breed Motion is GRANTED to the extent that Counts IV and V are DISMISSED, it is DENIED to the extent that the dismissal is WITHOUT PREJUDICE.

Plaintiff's Second Amended Complaint is DISMISSED sua sponte, but the dismissal is WITHOUT PREJUDICE. Plaintiff is GRANTED leave to amend her claims against Kobata related to the Property. Plaintiff is DENIED leave to amend insofar as she is not permitted to reallege claims against the Breed Defendants. However, this Order does not prevent Plaintiff from filing a new action against the Breed Defendants in a district court that has personal jurisdiction over them. Accordingly, Plaintiff is GRANTED leave to file a third amended complaint against Kobata by **September 25, 2023**. The third amended complaint must comply with the terms of this Order.

Finally, Plaintiff's Petition for Change of Venue, filed August 2, 2023, is DENIED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, August 25, 2023.



/s/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

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